

UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES
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RULES CHANGES

Upon careful consideration of certain proposed changes to the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, which were presented to and reviewed by the Rules Advisory Committee of the United States Court of Appeals for the Armed Forces, and thereafter published in the Federal Register for comment, it is, by the Court, ordered that effective January 1, 2006, Rules 36, 39, 21(b)(6), 24(a), 28(a), 32, 34(b), and 10(a)(3), are amended as follows:

RULE 36. FILING OF PLEADINGS

(a) In general. Pleadings or other papers relative to a case shall be filed in the Clerk's office, 450 E Street, Northwest, Washington, D.C. 20442-0001, either in person, **by mail, or by third-party commercial carrier.** See Rule 37(b)(2).

(b) Filing in person. (no change).

(c) Filing by mail or third-party commercial carrier.
If a pleading or other paper is filed by mail, such filing shall consist of depositing the pleading or other paper with the United States Postal Service, with no less than first-class postage prepaid, properly addressed to the Clerk's office. **If a pleading or other paper is filed through a third-party commercial carrier, such filing shall consist of delivery to the commercial carrier for delivery within 3 calendar days.**

(d) Time of filing. Pleadings or other papers shall be deemed to have been filed on the date they are delivered to the Clerk's office under subsection (b) or on the date they are mailed **or delivered to a commercial carrier** under subsection (c). See Rules 37(b)(1) and 39(e).

(e) Non-compliant pleadings. (no change).

[Amended September 20, 1999, effective October 1, 1999; amended October 25, 2005, effective January 1, 2006.]

RULE 39. SERVICE OF PLEADINGS

(a) In general. At or before the filing of any pleading or other paper relative to a case in the Clerk's office, a copy thereof shall be served on all counsel of record, including amicus curiae counsel, in person, by mail, **by third-party commercial carrier, or by electronic means if the party being served consents.** See Rule 16(b). When a party is not represented by counsel, service shall be

made on such party in person, by mail, **or by third-party commercial carrier**. When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service must be at least as expeditious as the manner used to file the pleading or other paper with the Court. See Rule 36.

(b) **Personal service.** (no change).

(c) **Service by mail.** (no change).

(d) **Service by third-party commercial carrier.** If service is made by a third-party commercial carrier, it shall be for delivery within 3 calendar days.

(e) **Time of service.** Personal service is complete on delivery. Service by mail or third-party commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete upon transmission.

(f) **Certificate for review.** (no change other than re-designation of subparagraph).

(g) **Form of certificate of filing and service.** A certificate indicating the specific manner of filing under Rule 36 and the specific manner of service under this rule shall be included in any pleading or other paper substantially in the following form:

CERTIFICATE OF FILING AND SERVICE

I certify that the original and seven copies of the foregoing were [delivered] (or) [mailed-**specify class**] (or) [delivered to-**specify the name of the third-party commercial carrier-for delivery-specify within how many days delivery will be effected**] to the Court on _____ and that a copy of the foregoing was [delivered]

(date)

(or) [mailed-**specify class**] (or) [delivered to-**specify the name of the third-party commercial carrier-for delivery-specify within how many days delivery will be effected**] (or) [transmitted by electronic means with the consent of the counsel being served-**specify the electronic mail address or facsimile number used**] to (enter specific name of each counsel of record or party, if not represented) on _____.

(date)

(Typed name and signature
of certifying person)

(Address and telephone no.
of certifying person)

[Amended September 20, 1999, effective October 1, 1999; amended October 25, 2005, effective January 1, 2006.]

RULE 21(b)(6):

(6) A certificate of filing and service in accordance with Rule 39(g).

[Amended October 1, 1987; amended July 16, 1990, effective August 15, 1990; amended October 12, 1994; amended January 20, 1999, effective February 1, 1999; amended October 22, 2001, effective November 1, 2001; amended July 27, 2004, effective October 1, 2004; amended October 25, 2005, effective January 1, 2006.]

Rule 24(a):

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [delivered] (or) [mailed-*specify class*] (or) [delivered to-*specify the name of the third-party commercial carrier-for delivery and specify within how many days delivery will be effected*] to the Court and [delivered] (or) [mailed-*specify class*] (or) [delivered to-*specify the name of the third-party commercial carrier-for delivery and specify within how many days delivery will be effected*] (or) [transmitted by electronic means with the consent of the counsel being served] to _____ on _____.
(email or facsimile no.) (date)

Where more than one counsel or party is being served, the certificate should specify how each party or counsel was served.

(Typed name and signature
of certifying person)

(Address and telephone no.
of certifying person)

[Amended October 1, 1987; amended October 30, 1991, effective November 4, 1991; amended March 3, 1992, effective April 1, 1992; amended October 12, 1994, effective February 27, 1996; amended January 12, 1998, effective February 2, 1998; amended January 20, 1999, effective February 1, 1999; amended October 22, 2001, effective November 1, 2001; amended July 27, 2004, effective October 1, 2004; amended October 25, 2005, effective January 1, 2006.]

Rule 28(a):

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [delivered] (or) [mailed-*specify class*] (or) [delivered to-*specify the name of the third-party commercial carrier-for delivery and specify within how many days delivery will be effected*] to the Court, [delivered] (or) [mailed-*specify class*] (or) [delivered to-*specify the name of the third-party commercial carrier-for delivery and specify within how many days delivery will be effected*] (or) to the [trial or appellate military judge whose decision, judgment, or order is the subject of the petition], and [delivered] (or) [mailed-*specify class*] (or) [delivered to-*specify the name of the third-party commercial carrier-for delivery and specify within how many days delivery will be effected*] (or) [transmitted by electronic means with the consent of the counsel being served-*specify the electronic mail address or facsimile number used*] to _____,
(email or facsimile no.)
the [respondent] [appellee] on _____.
(date)

(Typed name and signature)

(Address and telephone no.)

[Amended October 12, 1994; amended February 27, 1996; amended March 26 and April 30, 1998, effective May 1, 1998; amended October 25, 2005, effective January 1, 2006.]

Rule 32:

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [delivered] (or) [mailed-*specify class*] (or) [delivered to-*specify the name of the third-party commercial carrier-for delivery and specify within how many days delivery will be effected*] to the Court and [delivered] (or) [mailed-*specify class*] (or) [delivered to-*specify the name of the third-party commercial carrier-for delivery and specify within how many days delivery will be effected*] (or) [transmitted by electronic means with the consent of counsel being served] to the [appellant] [appellee] [petitioner] [respondent] on _____.
(date)

(Typed name and signature)

(Address and telephone no.)

[Amended October 12, 1994, amended February 27, 1996; amended October 25, 2005, effective January 1, 2006.]

Rule 34(b):

(a) Additional time when service not made in person—~~service by mail.~~

Whenever a party has the right or is required to do some act within a prescribed period after the issuance of an order or the filing of a notice, pleading, or other paper relative to a case when service thereof is made upon him by mail, 5 days will be added to the prescribed period if the party upon whom the service is made is within the limits of the contiguous 48 States and the District of Columbia, and 15 days will be added if the party is located outside these limits, including the States of Alaska and Hawaii. **If service is made by delivery to commercial third-party carrier or electronically, an additional 3 days will be added to the prescribed period, regardless of the location where service is made.** This provision for additional time shall not apply, however, to the time limitations prescribed in Rule 19(a)(1) for the filing of a petition for grant of review.

[Amended October 1, 1987; amended October 12, 1994; amended October 25, 2005, effective January 1, 2006.]

Rule 10(a)(3):

(3) a special docket of the matters arising under Rule 15 concerning complaints of unprofessional conduct against a member of the Bar of this Court, **and petitions and other correspondence that are not docketed on another docket, and that are returned to the sender.**

[Amended March 26, 1998, effective May 1, 1998; amended October 25, 2005, effective January 1, 2006.]

Pursuant to Rule 45 of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces, the following person whose term expired on September 30, 2005, is hereby reappointed this 25th day of October, 2005, to the Rules Advisory Committee for a term expiring on September 30, 2008:

Professor Mary M. Cheh

Mary T. Hall, Esq., is hereby appointed to replace Mark J. Biros, Esq., whose term expired on September 30, 2005. Ms. Hall's term will expire on September 30, 2008.

Professor Peter Bowman Rutledge, is hereby appointed to replace Paul J. Larkin, Esq., whose term expired on September 30, 2005. Professor Rutledge's term will expire on September 30, 2008.

The following members, whose terms expire on the dates indicated below, remain on the Rules Advisory Committee:

To expire on September 30, 2006:

Hon. Joseph H. Baum
Captain Carol J. Cooper, JAGC, U.S. Navy (Ret.)
John F. DePue, Esq.
Robert H. Troidl, Esq.

To expire on September 30, 2007:

Prof. Steven H. Goldblatt, Chair
Thomas F. Granahan, Esq.
Matthew S. Freedus, Esq.
LtCol Theresa Gallagher, JA, U.S. Army

William A. DeCicco, Clerk of the Court, is an ex officio member of the Committee and serves as its Reporter.

The Court wishes to express its deepest appreciation to Mark J. Biros, Esquire, and Paul J. Larkin, Esquire, for their outstanding service as members of the Rules Advisory Committee.